

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through XVI pertaining to home)	ON PROPOSED ADOPTION
and community services for seriously)	
emotionally disturbed youth)	

TO: All Interested Persons

1. On January 14, 2008, at 3:00 p.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on January 7, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)-444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND
AUTHORITY OF STATE TO ADMINISTER PROGRAM (1) The U.S. Department of Health and Human Services (HHS) has provided a grant to the Montana Department of Public Health and Human Services (department), under Section 6063 of the Deficit Reduction Act of 2005, that allows Montana to submit to the Centers for Medicare and Medicaid Services (CMS) a proposal to establish a program of Medicaid funded home and community services for youth who have serious emotional disturbance. That proposal has been presented to and approved by CMS. The purpose of this program is to avoid institutionalizing youth with serious emotional disturbance in residential treatment facilities. Institutionalization is avoided through the provision of mental health services and other services that support and treat those youth while residing with their families and receiving mental health treatment in the community.

(2) In accordance with the state and federal statutes and rules generally governing the provision of Medicaid funded home and community services and any federal-state agreements specifically governing the provision of the Medicaid funded home and community services to be delivered through this program, and within the fiscal limitations of the funding appropriated and available for the program, the department may determine within its discretion the following features of the program:

(a) the types of services to be available;

- (b) the amount, scope, and duration of the services;
 - (c) the categories of youth to be served;
 - (d) the total number of service opportunities that may be made available;
 - (e) the total number of service opportunities that may be made available by category of eligibility or by geographical area;
 - (f) individual eligibility; and
 - (g) geographic service areas.
- (3) A youth's enrollment in the program and the provision of services to the youth through the program are at the discretion of the department. There is no legal entitlement for a youth to enroll in the program or to receive any or all the services available through the program.
- (4) The department has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered in the following service areas for which federal approval of coverage has been received:
- (a) Yellowstone County, implementation date of October 1, 2007.
- (5) In each of the service areas specified in this rule, no more than 20 service opportunities may be made available at any time.
- (6) The total cost of expenditures annually for services delivered through the program plus the total cost of Medicaid state plan costs for program participants annually may not exceed the total annual projected Medicaid cost for the participants if they were receiving treatment in a residential psychiatric treatment facility.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE II HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: ELIGIBILITY FOR PROGRAM

- (1) Eligibility of a youth for the program is determined by the department in accordance with the criteria in this rule.
- (2) Placement opportunities in the program are limited. A youth who meets the criteria for eligibility in the program may not be allowed to enroll in the program. There is no entitlement to enrollment in the program. In accordance with this rule the department determines whether a youth who meets the eligibility criteria may be enrolled in the program.
- (3) A youth is eligible to be considered for enrollment in the program if:
- (a) the youth is age six through 16, up to the 17th birthday;
 - (b) the youth is Medicaid eligible;
 - (c) the youth requires the level of care, as determined through the certificate of need process, for a psychiatric residential treatment facility in accordance with ARM 37.88.1116;
 - (d) the youth will not be concurrent with enrollment in the program residing in a hospital or a psychiatric residential treatment facility;
 - (e) the youth has mental health and related supportive services needs that can be met through the program;
 - (f) the youth meets the clinical criteria of serious emotional disturbance as defined at ARM 37.86.3702;

- (g) the youth's parent(s) or other responsible caregiver having physical custody is committed to supporting and facilitating the youth's participation in the program;
- (h) the youth resides in a service area as specified in [RULE I];
- (i) the youth is not otherwise receiving Medicaid funded case management services; and
- (j) the youth is not receiving services through another Medicaid funded home and community program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE III HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: SELECTION FOR PLACEMENT

- (1) In accordance with this rule the department determines whether a youth who meets the eligibility criteria may be offered a service opportunity in the program.
- (2) The department considers the following factors in selecting eligible youth to evaluate for placement into an available program service opportunity:
 - (a) the youth resides within the geographical coverage for the available service opportunity;
 - (b) the youth meets the eligibility criteria of this rule;
 - (c) the youth is actively seeking program and other mental health services;
 - (d) the youth is in need of the services available through the program;
 - (e) the youth is likely to benefit from the services available through the program; and
 - (f) the youth's individual projected total cost under the preliminary plan of care is within the limits specified in [RULE VII].
- (3) The department may consider the following factors in selecting which eligible youth to offer an available service opportunity:
 - (a) the extent and nature of the youth's mental, medical, and psychological impairments;
 - (b) the youth's current institutionalization or immediate risk of institutionalization in a psychiatric residential treatment facility;
 - (c) the youth's need for supervision;
 - (d) the youth's need for formal paid services;
 - (e) the risk of the deterioration of the youth's well-being without services;
 - (f) the need to support the youth's primary caregiver;
 - (g) the status of health and safety issues that place youth at risk;
 - (h) the presence and status of current services being purchased otherwise for the youth;
 - (i) the presence and status of informal supports; and
 - (j) the availability of program services that suit the person's circumstances and treatment needed.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE IV HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: LOSS OF A SERVICE AND
DISENROLLMENT

(1) A service available through the program may be denied to a youth for the following reasons:

- (a) the service is not appropriate for the youth;
- (b) a service that is a necessary ancillary to the provision of the service is unavailable;
- (c) access to the service, even with reasonable accommodation, is precluded by the youth's physical or mental health; or
- (d) the financial costs and other impacts on the program due to the delivery of the service to the youth do not conform with the plan of care requirements in proposed [RULE VI].

(2) A youth enrolled in the program may be terminated from the program by the department for the following reasons:

- (a) the services, as provided for in the plan of care, are no longer appropriate or effective in relation to the youth's needs;
- (b) the failure of the youth or parent(s) or responsible caregiver having physical custody to participate in or support the services as provided for in the plan of care;
- (c) the behaviors of the youth place the youth, the youth's caregivers, or others at serious risk of harm or substantially impede the delivery of services as provided for in the plan of care;
- (d) the youth requires more supervision than the program can provide;
- (e) the youth's needs, inclusive of physical and mental health, cannot be effectively or appropriately met by the program;
- (f) a necessary service or ancillary service is no longer available;
- (g) the deteriorating mental health of the youth is deteriorating or in some manner so as to preclude the youth's participation in the program;
- (h) the total cost of the youth's plan of care is not within the limits specified at [RULE VII];
- (i) the youth no longer requires, as specified in ARM 37.88.1116, the level of care of a psychiatric residential treatment facility;
- (j) the youth no longer meets the clinical criteria of serious emotional disturbance as defined at ARM 37.86.3702;
- (k) the youth no longer resides in a geographic service area specified in [RULE I];
- (l) the youth has attained age 17; or
- (m) the youth's parent(s) or the responsible caregiver having physical custody chooses to withdraw the youth from the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE V HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES

(1) The services available through the program are limited to those specified in this rule.

(2) The department may determine the particular services of the program to make available to an eligible youth based on, but not limited to, the following criteria:

- (a) the youth's need for a service generally and specifically;
- (b) the suitability of a service for the youth's circumstances and treatment;
- (c) the availability of a specific service through the program and any ancillary service necessary to meet the youth's needs;
- (d) the availability otherwise of alternative public and private resources and services to meet the youth's need for the service;
- (e) the youth's risk of significant harm if not in receipt of the service;
- (f) the likelihood of placement into a more restrictive setting if not in receipt of the service; and
- (g) the financial costs for and other impacts on the program arising out of the delivery of the service to the youth.

(3) The following services, as defined in these rules, may be provided through the program:

- (a) consultative clinical and therapeutic services;
- (b) customized goods and services;
- (c) education and support services;
- (d) home-based therapist;
- (e) nonmedical transportation; and
- (f) respite care.

(4) Monies available through the program may not be expended on the following:

- (a) services not specified in (3);
- (b) room and board; and
- (c) special education and related services as defined at 20 USC 1401(16) and (17).

(5) A program service is not reimbursed by the program for a youth if the provision of a payment for that type of service is otherwise available to the youth from another source inclusive of Medicaid state plan services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE VI HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE AND PLANS OF CARE: PLAN MANAGEMENT

(1) Plan management includes planning for, arranging for, implementation of, and monitoring of the delivery of services available through the program to an enrolled youth.

(2) Plan management is the responsibility of the plan manager who is an employee of the department.

(3) Upon the youth's initial enrollment in the program, the plan of care is developed by the plan manager, in collaboration with the youth and the youth's parent(s) or responsible caregiver having physical custody, appropriate health care professionals, and others who treat or have knowledge of the youth's mental health and related needs.

(4) The plan of care must be reviewed and approved by the department.

Revisions, if necessary, are made at intervals of at least every three months beginning with the date of the initial plan of care.

(5) The services that a youth may receive through the program and the amount, scope, and duration of those services must be specifically authorized in writing through the plan of care for the youth.

(6) Each plan of care must record the following:

(a) diagnosis, symptoms, complaints, and complications indicating the youth's need for services;

(b) a description of the youth's functional level;

(c) a statement of treatment objectives for the youth;

(d) a description of any orders for the youth, including:

(i) medication;

(ii) therapeutic interventions and other treatments;

(iii) restorative and rehabilitative services;

(iv) activities;

(v) therapies;

(vi) social services;

(vii) dietary limitations;

(viii) crisis plan; and

(ix) other special procedures recommended for the health and safety of the youth to meet the objectives of the plan of care;

(e) the specific program and other services to be provided to the youth, along with the frequency of the services, and the type of providers to provide them;

(f) the projected annualized total cost of the program services to be provided to the youth including the annualized costs of each service; and

(g) the names and signatures of all persons who have participated in developing the youth's plan of care, including the youth, if able to participate, and parent(s) or the responsible caregiver having physical custody. The signatures verify participation, agreement with the plan of care, and acknowledgement of the confidential nature of the information presented and discussed.

(7) Inclusion of the need for and the identification of nonprogram services in the youth's plan of care does not financially obligate the department to fund those services or to assure their delivery and quality.

(8) The department must provide a copy of the plan to the youth and the youth's family.

(9) The youth and parent(s) or responsible caregiver having physical custody must sign the document. If the youth is unable to participate in developing the plan, that must be documented.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE VII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: COST OF PLAN OF CARE (1) In order to maintain the program cost within the cost neutrality limitation necessary for compliance with the federal legal authorization for the implementation of the program, the cost of plans of care for enrolled youth are collectively and individually

subject to limitation in accordance with federal and state authorities and this rule.

(2) The calculated cost to implement a plan of care for a youth may not exceed a sum calculated by dividing the total sum of monies available through legislative appropriation for funding during the current fiscal year by the number of service opportunities to be made available through the program during the fiscal year. The total annual sum of expenditures for program services and state plan services provided to a youth may not exceed a maximum amount set at 100% of the average individual cost calculated by the department to treat a resident of a psychiatric residential treatment facility in Montana.

(3) The cost of services to be provided under a youth's plan of care is determined prior to implementation of the proposed plan of care and may be revised as necessary after implementation.

(4) The cost determination for the services provided under a youth's plan of care may be revised at any time there is a significant revision in the plan of care or in the cost of the services being reimbursed through the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE VIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS

(1) Services funded through the program may only be provided by or through a provider that:

- (a) is enrolled with the department as a Montana Medicaid provider;
 - (b) meets all the requirements necessary for the receipt of Medicaid monies;
 - (c) has been determined by the department to be qualified to provide services to youth with serious emotional disturbance in accordance with the criteria set forth in these rules;
 - (d) is a legal entity; and
 - (e) meets all facility and other licensing requirements applicable to the services offered, the service settings provided, and the professionals employed.
- (2) A youth's immediate family members may not provide services to the youth as a reimbursed provider or as an employee of a reimbursed provider. Immediate family members include a parent, step-parent, domestic partner, or full legal guardian.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE IX HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT

(1) Services available through the program are reimbursed as provided in this rule.

(2) Program services are reimbursed at the lower of the following:

- (a) the provider's usual and customary charge for the services; or
- (b) the fees stated in the program's Chart of Service Reimbursement Rates and Procedures. The department adopts and incorporates by reference the fee schedule for home and community services for youth with serious emotional

disturbance in the department's Chart of Service Reimbursement Rates and Procedures for Youth with Serious Emotional Disturbance dated October 1, 2007 and published by the department. A copy of the chart may be obtained through the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) Reimbursement is not made for a service that is otherwise available from another source.

(4) No copayment is imposed on services provided through the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE X HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING

(1) The department provides written notice to an applicant for or youth enrolled in the program when an adverse determination concerning the youth's eligibility and placement or the delivery of program services to the youth is made by the department.

(2) The department provides a youth receiving services and the youth's parent(s) or responsible caregiver having physical custody with notice ten working days before the intended date for the adverse action.

(3) A youth aggrieved by any adverse determination may request a fair hearing to be conducted as provided for in ARM 37.5.105, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XI HOME AND COMMUNITY SERVICES FOR YOUTH WITH
SERIOUS EMOTIONAL DISTURBANCE: CONSULTATIVE CLINICAL AND
THERAPEUTIC SERVICES, REQUIREMENTS

(1) Consultative clinical and therapeutic services provide treating physicians and mid-level practitioners with access to the psychiatric expertise and consultation in the areas of diagnosis, treatment, behavior, and medication management.

(2) Consultative clinical and therapeutic services are provided by licensed psychiatrists.

(3) Consultation is provided to licensed physicians or mid-level practitioners who are treating youth enrolled in the program.

(4) Both the consulted psychiatrist and the requesting physician or mid-level practitioner may bill for the consultative clinical and therapeutic services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XII HOME AND COMMUNITY SERVICES FOR YOUTH WITH

SERIOUS EMOTIONAL DISTURBANCE: CUSTOMIZED GOODS AND SERVICES, REQUIREMENTS

(1) Customized goods and services allow for the purchase as a program service of services or goods not typically reimbursed by Medicaid. These customized goods and services are used by the youth to facilitate access to supports designed to improve and maintain the youth in the community.

(2) The plan of care must:

- (a) document the youth's need for this service;
- (b) document attempts to identify alternative funding and/or resources; and
- (c) include all documentation/receipts.

(3) Customized goods and services must be prior authorized and are limited to \$200 per youth per federal fiscal year.

(4) Customized goods and services cannot be used to provide any otherwise covered services or goods, monthly rent or mortgage, food, regular utility charges, household appliances, automobile repairs, or items that are for purely diversion/recreational purposes.

(5) Providers must have the fiduciary capacity to procure the goods and services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: EDUCATION AND SUPPORT SERVICES, REQUIREMENTS

(1) Education and support services are provided to family members, unpaid caregivers, and persons providing treatment or otherwise involved in the youth's life.

(2) Education and support services include instruction on the diagnostic characteristics and treatment regimens for the youth, including medication for the youth, and behavioral management.

(3) Education and support services are provided by appropriate community agencies with the capacity to offer periodic trainings specific to parent(s) or legal guardians of youth with serious emotional disturbance.

(4) All training curricula and community providers of such training must be approved by the department.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XIV HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: HOME-BASED THERAPY SERVICES, REQUIREMENTS

(1) Home-based therapists are social workers licensed in accordance with ARM 37.88.205, professional counselors licensed in accordance with ARM 37.88.305, and psychologists licensed in accordance with ARM 37.88.605 who provide face-to-face, individual, and family therapy for youth and parent(s) or legal guardians in the youth's residence at times convenient for the youth and family.

(2) As part of the provision of the therapy and for the purposes of the plan of care specified in (1), the home-based therapist must:

- (a) communicate with the department regarding the status of the youth and treatment;
- (b) develop and write an individual treatment plan with the youth and parent(s) or legal guardian specific to mental health therapy;
- (c) provide crisis response during and after working hours;
- (d) assist the youth with transition planning; and
- (e) attend family and team meetings and other pertinent activities that support success in the community.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XV HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NONMEDICAL TRANSPORTATION SERVICES (1) Nonmedical transportation is the provision of transportation through common carrier or private vehicle for the youth's access to and from social or other nonmedical activities that are included in the waiver plan of care.

(2) Nonmedical transportation services are provided only after volunteer transportation services, or transportation services funded by other programs, have been exhausted.

(3) Nonmedical transportation providers must provide proof:

- (a) that all drivers possess a valid Montana driver's license;
- (b) that all vehicles are adequately insured for personal injury; and
- (c) that all vehicles are in compliance with all applicable federal, state, and local laws and regulations.

(4) Nonmedical transportation services must be provided by the most appropriate cost effective mode.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

RULE XVI HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: RESPITE CARE SERVICES (1) Respite care is the provision of supportive care to a youth so as to relieve those unpaid persons normally providing day to day care for the youth from that responsibility.

(2) Respite care services may be provided only on a short term basis, such as part of a day, weekends, or vacation periods.

(3) Respite care services may be provided in a youth's place of residence or through placement in another private residence or other related community setting, excluding psychiatric residential treatment facilities.

(4) The provider of respite care must ensure that its employees providing respite care services are:

- (a) physically and mentally qualified to provide this service to the youth;
- (b) aware of emergency assistance systems and crisis plans;
- (c) knowledgeable of the physical and mental conditions of the youth;
- (d) knowledgeable of common medications and related conditions of the youth; and

(e) capable to administer basic first aid.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

4. The Department of Public Health and Human Services administers for the state of Montana various health care services programs funded with Medicaid monies. The federal government has recently reviewed and approved a program of Medicaid funded home and community services that Montana designed to foster the treatment of seriously emotionally disturbed youth at home in community settings. The services in this approved program are not available generally through existing public programs.

In the Deficit Reduction Act of 2005, Congress authorized the Centers for Medicare and Medicaid Services (CMS) of the federal Department of Health and Human Services to provide grants to ten states to support the effort of each state to develop and propose to CMS a new type of Medicaid funded home and community waiver program to serve youth with severe emotional disturbance in their communities as opposed to placement into restrictive residential youth treatment facilities. Montana submitted a proposal to CMS to receive one of the ten state grants and was selected to receive a grant. As one of the successful grant applicants, Montana submitted a 1915(c) waiver application at the request of CMS for the development and implementation of home and community services to foster treatment of emotionally disturbed youth at home in their communities rather than in institutional treatment settings. CMS, acting under the authority of Section 6063 of the Deficit Reduction Act of 2005 (DRA), has authorized the establishment by Montana of a program of Medicaid funded home and community services for youth who have serious emotional disturbance.

With federal approval states may implement Medicaid funded home and community services programs to serve persons who but for the home and community services would be in institutional care settings. Each authorized program is to have a service population defined by particular disabilities and certain service needs and is to be limited in number. In addition, a state may limit the services on a geographical basis. These parameters are proposed by a state and approved by CMS.

In 1980, Montana initiated the first program in the country of home and community services funded with Medicaid monies. That program provided developmental disabilities treatment services in community settings as opposed to an institutional Intermediate Care Facility for the Mentally Retarded (ICF/MF). Montana also developed a home and community services program to serve persons who are elderly or who have physical disabilities. That program allows persons to avoid institutionalization in nursing facilities or hospitals. In more recent years that program has expanded to encompass services for persons with brain injuries. In December 2006, Montana received approval from CMS to implement a home and community services waiver program to adults with severe disabling mental illness; the second one in the nation.

The population to be served through the newly approved waiver encompasses seriously emotionally disturbed youth who meet the clinical criteria defined in ARM 37.86.3702(2) and who would otherwise reside in and receive Medicaid reimbursed care in a psychiatric residential treatment facility.

When fully implemented the program is to serve at any given time up to 100 service opportunities for youth with serious emotional disturbance. Because the program is to pilot a scheme of services, the state has obtained permission to not provide the program on a statewide basis but rather is to incrementally implement the program in a limited set of counties. The first county offering the home and community services for youth with serious emotional disturbance is Yellowstone County beginning October 1, 2007 with the capacity for 20 service opportunities to be available in the first year of the waiver. As other locales are selected the rules will be amended to add those new areas.

This community program of services for youth with serious emotional disturbance will significantly advance through a change in systems the state's efforts to more effectively and efficiently meet the needs of youth with serious emotional disturbance by providing a model for positive changes in the delivery of services.

The implementation of this set of proposed rules, with the resulting establishment of a service program focused on providing services to meet the needs of youth with serious emotional disturbance, is necessary to generally assure the well being of those youth who participate in the program by fostering the provision of services to assist them successfully living in a community setting, rather than a psychiatric residential treatment facility, while receiving treatment and support.

The department in reviewing possible alternatives to the implementation of this new community services program considered maintaining the status quo. The science and philosophy of treatment, the expectations of the consumers and the general public, and the service goals of the state necessitate the development of a community based treatment alternative. The status quo is unacceptable for those reasons. In addition, the federal funding for the development of additional services cannot be applied to further funding of the existing institutional services which are characteristic of the status quo. The department did not believe it prudent to forego the system change and the service expansion opportunities that the implementation of the program represented. Other alternatives could not be identified.

The Montana Legislature appropriated monies for the purpose of funding the implementation and maintenance of this program during the biennium. When the program is fully implemented during state fiscal year 2009, expenditures under the program are projected to be approximately \$1.3 million dollars. The monies for the program are Medicaid and therefore the monies for the expenditures will be 30% state general fund and 70% federal Medicaid monies in origin.

In accordance with Presidential Executive Order 13175, November 6, 2000, the

tribal governments in Montana were afforded the opportunity for comment about the department's intent to submit application for the implementation of this home and community program.

RULE I HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION

Proposed Rule I acknowledges in rule the federal authorities governing the implementation of the new program of Home and Community Services for Youth with Serious Emotional Disturbance, states generally the parameters of the department's discretion in the development and administration of the program, and expressly denotes the number of service opportunities to be provided and the geographical location of those opportunities. The provision by a state of health care and health care related services funded with federally derived Medicaid monies necessitates conformance by the state with the federal statutes, regulations, the federal approval for the program, and the federal policies that govern expenditures of those monies. This proposed rule is necessary to denote that authority. The option of not specifying the federal authority governing the program was not considered appropriate since it governs the implementation of the program.

In addition, the proposed rule establishes the discretion of the department to manage the various aspects of the program in conformance with federal authority, the appropriated budget authority, and as otherwise determined appropriate by the department. This application of discretion to the program is necessary to assure continuing conformance with the governing federal authority so as to avoid withdrawal of federal approval for the program and to avoid federal recoupment for inappropriate expenditures of federal monies. Discretion is also necessary to assure that the program is managed within the programmatic and fiscal parameters and limitations that the Legislature may impose upon the department in the appropriation process. The necessity to conform to the governing state authority and fiscal dictates precludes consideration of other options.

The proposed rule denotes the geographical locations within which the program will make services available. The program is to be initially implemented the first year with 20 service opportunities in Yellowstone County rather than on a statewide basis due to the lack of sufficient resources for statewide implementation. The department will seek to amend these rules after decisions are made regarding implementation into other counties. Consequently, the alternative of initiating the program on a broader or statewide basis was not considered.

RULE II HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: ELIGIBILITY FOR PROGRAM

The proposed rule states the eligibility criteria for acceptance into the program. Eligibility criteria is necessary to assure that services are provided to youth who are appropriate for and in need of the services of the program and that the eligibility

parameters of the plan entered into with CMS for the program are properly implemented and complied with.

The definition of a service population is essential to federal approval of the program as a Medicaid funded home and community program. The federal authorities limit the potential service populations to persons who can meet standard Medicaid eligibility and who are within a well defined service population predicated upon one or more types of disability. The state may not vary from criteria once accepted by the approving federal authorities. Some of the proposed eligibility criteria, in particular that related to potential institutionalization, are necessarily drawn from the governing federal authority that commands such criteria.

The measures to be implemented through this proposed rule could not be foregone since they are necessary aspects of implementation as required by the grant agreement with CMS and by federal law. Consequently, the option of not establishing eligibility could not be considered. Other options as to eligibility criteria were not considered since that too is federally mandated under the DRA and the resulting approval of the Montana Home and Community Services Program.

The department initiated the program for the purpose of addressing a significant need for health and health related services to maintain youth with serious emotional disturbance in community settings as opposed to more restrictive less integrated institutional placements in psychiatric residential treatment facility settings. Consequently, consideration was not given to varying the principal definitional parameters for the eligibility criteria. That criteria referenced from an existing set of criteria established in departmental rule is based on national criteria for establishing the presence of serious emotional disturbance.

RULE III HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: SELECTION FOR PLACEMENT

The proposed rule states the criteria for a youth accepted into the program to be considered for a particular service opportunity that becomes available and the criteria by which the youth most suitable for an available service opportunity is selected for the program. These features are necessary to assure that available service opportunities are provided to those eligible youth who best can be served by those service opportunities.

Service opportunities under federal law for Medicaid funded home and community services are not available on an unlimited basis. By agreement with the federal officials a ceiling must be placed upon the service population for the program. The proposed rules are further necessary to assure that the number of service opportunities are rationed within the limits of the federal approval and state appropriations.

The measures to be implemented through this proposed rule could not be the foregone. They are necessary aspects of implementation as required by the grant

agreement with CMS and by federal law. Furthermore, they are necessary to assure that the limited resources of the program are rationed in a manner that benefits those consumers who can best be served by the particular service opportunities becoming available. Consequently, the option of not establishing selection criteria could not be considered. The selection criteria were drawn from criteria for other programs that have proven to be effective in arriving at appropriate selections.

RULE IV LOSS OF A SERVICE AND DISENROLLMENT

The proposed criteria to govern disenrollment from the program were generally drawn from the established home and community services program for persons who are elderly, physically disabled, or adults with severe disabling mental illness. The proposed criteria also incorporated the youth's parents' or responsible caregiver with physical custody choice to withdraw from the program or not participate in the youth's program. The establishment of this set of criteria is necessary to provide for the termination of services when delivery is no longer appropriate for treatment, programmatic, or fiscal reasons. A youth should not be retained in the program when the youth's best interests are not being served or the cost of services for the youth would violate the federal formulas for cost of services. The option of not including this set of criteria was not considered because of the necessity for mandatory conformance with the federal governing authorities. The option of selecting criteria drawn from that of a well established home and community program was chosen over other possible sources of criteria because this set of criteria from the other program has been developed based upon experience and has proven to be effective in resolving the issues as to the appropriateness of continuing services to a youth.

The provisions providing that a youth may have a service denied or terminated and specifying the criteria for denial or termination of a particular service are necessary to apprise youth and their families that receipt of particular services are subject to conditions and to provide notice of those qualifying conditions. Specification of the criteria is also necessary to provide conformance with the governing federal authority in particular the plan for the program as approved by CMS.

RULE V HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES

The proposed rule specifies the array of services that is to be available through the program. These are the services that the department may provide to youth who meet the criteria for the program in proposed Rule II. Proposed Rule V provides the criteria for the department to determine the particular services, inclusive of program and nonprogram services, necessary to meet the youth's needs.

The proposed rule, specifying the array of services available through the program, is necessary for the purposes of conforming administration of the program with the specification of services in the governing federal authority in particular the plan for the program as approved by CMS. The specification of the array of services is also

necessary for youth, parents or legal guardians, advocates, and providers to be informed of the list of available program services.

The services selected to be offered as program services are those services that the department after consultation determined would be of positive consequence in meeting the goals of the program to provide certain health and health related needs that would maintain youth with serious emotional disturbance in community settings and that are appropriate services to be delivered under the service criteria of the governing federal authorities. This set of services provides the desirable array of services by which to meet the outstanding needs of the intended service population. Consequently, viable alternative sets of services were not identified to be considered in the alternative.

The services to be made available were selected because those services would foster the stability of the youth in the community either through treatment or would support the continued presence of the youth in the community for treatment purposes.

The option of not outlining the services and the criteria for denying or terminating a program service was rejected, as it would leave the public without any guidance as to the array of services included in the program as well as the basis for denying a program service and the department would lack express rule authority by which to appropriately regulate the use of particular services by youth in accordance with governing authorities and the identified needs of the youth.

RULE VI HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PLANS OF CARE AND PLAN MANAGEMENT

The proposed rule would require the development of a plan of care for each youth served through the program. The particular types of services that may be provided to a youth, choices of providers, and unique aspects of delivery for a youth, are set forth in the plan of care. The proposed rule establishes the process for development of a plan of care, provides that the department is responsible for the plan of care, and denotes the intervals for which plans of care are initially developed and subsequently reviewed.

The proposed rule is necessary to establish a planning process to direct the provision of services to youth participating in the program. The delivery of services to a youth will be ineffective unless the development and delivery of services is done in a manner that matches those services to the youth's needs and assures that they are effectively delivered and monitored. The plan of care serves that purpose. The plan of care requirement assures that there is consistent implementation within the state of the program's services.

The federal authorities governing the program require individual plans of care for each participating youth. The youth's treatment and supportive needs are to be identified in the plan along with the measures by which implementation of services is

to occur. In the absence of the plan of care, the program could not effectively deliver services.

The proposed plan of care measures are currently applied to home and community programs and serves well in bringing an integrated interdisciplinary approach to planning while accommodating the consumer's participation in the process. Since the plan of care conforms with the well-established and proven standard case management measures used in the management of social and health care services, including the department's other similar programs, the department did not consider any alternative measures for the management of services.

RULE VII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: COST OF PLANS OF CARE

The proposed rule would place limitations upon the program expenditures for services provided to each youth under the youth's plan of care. The total annual cost of program services and state plan services for each youth may not exceed a maximum individual limit set by the department. The department would derive the maximum limit based on the number of service opportunities available in the fiscal year and the amount of monies available to the program as authorized in appropriation by the Legislature. This limit could not exceed the federal individual expenditure limitation of 100% of the average cost of psychiatric residential treatment facility level of care.

These fiscal limitations are necessary to assure that the state may fiscally manage the program within the legislative appropriation available for the program and within the restrictions imposed by the governing federal authorities and in turn to apprise youth, providers, and others of those fiscal limitations.

The option of not proposing the rule was not considered since financial restrictions upon the expenditures for the program are state and federal law legal obligations. In addition, the public, youth, families, and program providers would not be aware of the financial limitation imposed upon the department in the administration of the program. Other forms of restrictive financial limitation were not considered since the applicable fiscal limitations are imposed by the federal governing authorities and the state Legislature.

RULE VIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS

The proposed rule would establish the general provider requirements for the program. A provider would need to: be enrolled as a Medicaid provider, comply with Medicaid fiscal and quality assurance standards, be a legal business entity, obtain and maintain appropriate insurance coverage, and conform with facility and professional licensing standards. The proposed rule also precludes immediate family members from serving as a provider.

The proposed rule is necessary to assure the programmatic and fiscal compliance of the service providers that are engaged in the delivery of services and to conform provider relationships with the governing federal authorities. The preclusion of family members and legal guardians from providing care directly to the youth either as a provider or as an employee of a provider is necessary to avoid compensating family members for their familial responsibilities.

Since federal and state law requirements necessitate the imposition of programmatic and fiscal compliance measures, the option of not imposing such compliance by the provider was rejected. In addition, even if the department had the discretion to forego these measures, not imposing these measures would leave the public vulnerable to unqualified providers and the state vulnerable to the misappropriation of program funding. The measures represent federal and other legal requirements and therefore consideration of other measures did not occur.

The specific measures incorporated into the proposed rule are drawn from the department's Existing Home and Community Services Program for the Elderly and Persons with Physical Disabilities. Those measures have been selected because they have proven to be effective at and acceptable for achieving administrative compliance with the various federal and state requirements.

RULE IX HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT

The proposed rule would establish how the services available in the program are reimbursed. That proposed rule groups lists of services by each type of reimbursement methodology and describes the reimbursement methodologies. The proposed rule also states that: reimbursement is not available for services that may be reimbursed through another program, there is no copayment cost sharing requirement for program services, and there is no reimbursement for the provision of program services to other members of a recipient's household or family.

This rule is necessary to assure that services provided through the program are appropriately and economically purchased and that there is a common scheme of reimbursement that assures the fairness of reimbursement as among providers and consumers.

The option of not stating the reimbursement practices of the department was rejected, as clarity of reimbursement is essential for provider relations and the fiscal management of the program. These measures help establish and maintain a viable pool of providers.

This set of methodologies is being selected over other possible methodologies because it is a well established set of methodologies that is being applied to existing services that closely parallel those of this program. Implementation of this set of methodologies for the department and the providers will be facilitated by the use of the same set. For newly established services that are not currently being

reimbursed in other programs, the proposed rule would incorporate by reference a fee schedule manual. The fees in that manual have been derived by the department through reference to costs and fees associated with those particular types of services and with consideration also given to setting the fees for cost effectiveness.

Other approaches to reimbursement for these services were not considered since there are significant advantages, administratively and in provider relations, to replicating the reimbursement methodologies used for the reimbursement of services delivered through the existing Medicaid state plan funded adult mental health program.

RULE X HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING

The proposed rule would establish the due process that would be available to youth who wish to contest an adverse programmatic decision through reference to existing rules for fair hearings and adverse actions that would be appropriately applicable to this program. This proposed rule is necessary to assure conformity with due process requirements established in laws applicable to the program.

The department did not consider foregoing the adoption of this rule because of the necessity under federal law of providing due process fair hearings for youth who may be aggrieved by departmental actions concerning their eligibility and benefits. Under federal authority, the due process to be accorded must be in the form of a fair hearing. Consequently, the department did not consider any alternative due process forums or procedures. The proposed rule incorporates the rules adopted by the department to govern administrative appeals pertaining to issues in the provision of Medicaid funded services.

RULES XI THROUGH XVI PERTAINING TO PARTICULAR SERVICES

Proposed Rules XI through XVI specify the requirements for the various specific services that may be obtained and paid for through the Home and Community Services Program for Youth with Serious Emotional Disturbance. Those services, as specified in proposed Rule V, include consultative clinical and therapeutic services, customized goods and services, educational and support services, home-based therapist, nonemergency transportation, and respite care. These services have been selected as described in the discussion of proposed Rule V.

The various requirements pertaining to the proposed services have been drawn in part from the requirements applicable to those services currently as provided in the context of the program of home and community services for persons who are elderly, who have physical disabilities, or who are adults with severe disabling mental illness. As noted in the discussion of proposed Rule V, this set of services is well established in the context of that other program. Consequently, uniformity of requirements among the programs is appropriate for purposes of administrative convenience and provider performance and compliance. Other sets of requirements

were not considered appropriate given the desirability of uniformity.

These services, as proposed, allow for Medicaid coverage that is not available through the existing standard set of mental health services funded with Medicaid monies. These services are designed to assist a youth in need of mental health care to have a reasonably stable life style at home in the community while providing further mental health treatment to the youth.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 17, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Cary B. Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State December 10, 2007.